

## PROBLEM

*For purposes of doing this problem now, assume that Clarissa is, in fact, the owner of Stark Farm, and has been the owner since 1997. We'll see later on that that may not be right, but you're not ready to deal with that now.*

*I'll add other issues as the semester progresses. We will have covered everything that you need to know fully to by the week before Thanksgiving. It turns out in this case that the things that we do just before Thanksgiving are "red herrings." Before Thanksgiving you should e-mail me your answer to the whole question (rspang@law.harvard.edu). After Thanksgiving, I'll post the answer that I wrote to the question, and you can compare your answer to the that answer. (I will also post [anonymously] pieces of your answers that I thought were particularly good or which went astray in typical kinds of ways.) If you get me your answer before Thanksgiving, I can promise you that I will at least put a grade on it, and I usually am able to offer some comments as well. We can discuss the answers either on the web or in the Q&A sessions before Christmas. Obviously, I can't prevent you from waiting until the last minute before you write out your answer, but I can assure that it's easier if you do it as we go along, and within limits I'm happy to comment on your efforts as you go along.*

Andrew Stark was the owner in fee simple of the Stark Farm, in the U.S. state of Ur, east of Eden, with an unimpaired chain of title going back to a grant from the Federal Government in the mid-nineteenth century. Andrew died in 1985, leaving a will which was duly admitted to probate and which provided, in pertinent part:

"I devise the Stark Farm to my son Bartholomew and his heirs in fee simple for as long as they shall farm the property; and if they shall ever cease to farm it, then to my daughter, Clarissa and her heirs in fee simple, if she shall then be living; otherwise to the Eden Audubon Society.

"All the rest and residue of my property, real personal and mixed, I devise and bequeath to my aforesaid son Bartholomew and my daughter Clarissa, and to the survivor of them."

Bartholomew took possession of the Stark Farm and farmed it until 1990 when he died intestate, a widower survived by his only child, David, who took over the farming operations on the Stark Farm. In 1997, Clarissa, and her husband, Ebenezer, received the following letter signed by David:

"Dear Aunt Clarissa and Uncle Eb.,

"Despite my respect for Grandpa Andrew's wishes, I've found that the farmer's life is not for me. Deeply as I love you both, I'm perfectly happy to have you take over the Stark Farm. The land is all yours. I'm sure that you'll take care of it."

Clarissa and Ebenezer wrote David that they would respect his wishes and "took over the farm." David joined the Foreign Legion.

From 1997 to the present (which is 2015) Ebenezer has managed the farm, hired the help, borrowed the necessary funds on his own signature, and paid the taxes by checks on his own bank account. Clarissa lived with Ebenezer on the farm and helped out until her death in 2012. None of her children survived her. She left no will, and under the common law of intestacy (which still prevails in Ur), her heir is her nephew, David.

In the meantime the development that Andrew had anticipated as early as 1980 has come to fruition. Ebenezer has concluded that farming the Stark Farm is no longer feasible because of the combined effect of a number of circumstances: (1) Residential development in the area has prompted the adoption of environmental regulations that severely restrict the use of pesticides that are necessary for the profitable operation of the farm. (2) Huge mechanized farms are being developed in adjoining states (and in more rural areas of Ur) that are able to sell their produce at prices with which the Stark Farm cannot profitably compete.

Fiona, a land subdivider, is willing to pay Ebenezer a sum of money for the Stark Farm about twenty times its current worth as a farm, if satisfactory answers can be produced to the following legal questions:

(1) Does Ebenezer own any interest in the Stark Farm? If so, what interest?

*[The other questions are omitted for the time being.]*

Your senior partner (Ebenezer's attorney) has asked you for a preliminary memorandum analyzing the problem and indicating factual or legal questions requiring further investigation. You should write the memorandum, taking into account, to the extent necessary, the following statutes, the only ones in the state of Ur of any possible relevance to the case.

(1) A common-law reception statute. (1785)

(2) A married women's property act. (1850)

(3) A twenty-year statute of limitations on actions to recover real property. (1805)

(4) "Whoever, under claim and color of title, shall have maintained uninterrupted possession of land and paid the taxes on the same for a period of seven consecutive years shall be deemed the owner thereof." (1920).